

Private foundations; governing instruments of split-income trusts. Situations are given showing governing instrument provisions of split-income trusts described in section 4947(a)(2) and (b)(3) of the Code that meet the requirements of section 508(e).

Advice has been requested whether the governing instrument provisions set out in the two situations below meet the requirements of section 508(e) of the Internal Revenue Code of 1954 with respect to trusts described in section 4947(a)(2) of the Code.

Section 508(e) of the Code provides that a private foundation shall not be exempt under section 501(a) unless its governing instrument includes provisions the effects of which are:

(A) to require its income for each taxable year to be distributed at such time and in such manner as not to subject the foundation to tax under section 4942, and

(B) to prohibit the foundation from engaging in any act of self-dealing (as defined in section 4941(d)), from retaining any excess business holdings (as defined in section 4943(c)), from making any investments in such manner as to subject the foundation to tax under section 4944, and from making any taxable expenditures (as defined in section 4945(d)).

Section 4947(a)(2) of the Code classifies trusts which are not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to purposes described in section 107(c)(2)(B), and which have amounts in trust for which a deduction was allowed under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 as split-interest trusts and provides with respect to such trusts that sections 507, 508(e) (to the extent applicable), 4941, 4943, 4944, and 4945 shall apply as if such trusts were private foundations.

Section 4947(b)(3) of the Code further provides that sections 4943 and 4944 shall not apply to those trusts described in section 4947(a)(2) in which (1) all the income interest (and none of the remainder interest) is devoted to purposes described in section 170(c)(2)(B) and all amounts in such trusts for which a deduction was allowed under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have an aggregate value of not more than 60 percent of the aggregate fair market value of all amounts in such trusts; or (2) a deduction was allowed under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for amounts payable to every remainder beneficiary but not to any income beneficiary.

Situation 1. A trust, described in section 4947(a)(2) of the Code but not in section 4947(b)(3), has the following provisions

in its governing instrument:

(1) Any other provisions of this instrument notwithstanding, no trustee or other person acting on behalf of the trust shall engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws.

(2) Any other provisions of this instrument notwithstanding, no trustee or other person acting on behalf of the trust shall cause any excess business holdings as defined in section 4943(c) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws, to be retained.

(3) Any other provisions of this instrument notwithstanding, no trustee or other person acting on behalf of the trust shall cause any investment to be made in a manner that subjects the trust to tax under section 4944 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws.

(4) Any other provisions of this instrument notwithstanding, no trustee or other person acting on behalf of the trust shall make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws.

The provisions set out above prohibit the trustee or other persons from engaging in any acts with respect to the trust assets which would result in the trust being liable for any of the taxes imposed by sections 4941, 4943, 4944, and 4945 of the Code. Accordingly, the provisions meet the requirements of section 508(e) to the extent applicable to a trust described in section 4947(a)(2) but not in section 4947(b)(3).

Situation 2. A trust, described in section 4947(a)(2) and 4947(b)(3) of the Code, has the following provisions in its governing instrument:

(1) Any other provisions of this instrument notwithstanding, no trustee or other person acting on behalf of the trust shall engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws.

(2) Any other provisions of this instrument notwithstanding, no trustee or other person acting on behalf of the trust shall engage in any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws.

The provisions set out above prohibit the trustee or other persons from engaging in any acts with respect to the trust assets

which would result in the trust being liable for any of the taxes imposed by sections 4941 and 4945 of the Code. Accordingly, the provisions meet the requirements of section 508(e) to the extent applicable to a trust described in section 4947(a)(2) and section 4947(b)(3).